

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

MAR 27 2012

Federal Communications Commission
Office of the Secretary

In re

**MARITIME COMMUNICATIONS/LAND
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio
Services

Applicant for Modification of Various
Authorizations in the Wireless Radio Services

Applicant with **ENCANA OIL AND GAS (USA),
INC.; DUQUESNE LIGHT COMPANY; DCP
MIDSTREAM, LP; JACKSON COUNTY
RURAL MEMBERSHIP ELECTRIC
COOPERATIVE; PUGET SOUND ENERGY,
INC.; ENBRIDGE ENERGY COMPANY,
INC.; INTERSTATE POWER AND LIGHT
COMPANY; WISCONSIN POWER AND
LIGHT COMPANY; DIXIE ELECTRIC
MEMBERSHIP CORPORATION, INC.;
ATLAS PIPELINE – MID CONTINENT, LLC;
DENTON COUNTY ELECTRIC
COOPERATIVE, INC., DBA COSERV
ELECTRIC; AND SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY**

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004144435, 0004193028, 0004193328,
0004354053, 0004309872, 0004310060,
0004314903, 0004315013, 0004430505,
0004417199, 0004419431, 0004422320,
0004422329, 0004507921, 0004153701,
0004526264, 0004636537,
and 0004604962

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY TO
MARITIME'S STATUS REPORT AND RESPONSE**

1. Pursuant to the Presiding Judge's March 26, 2012 Order,¹ the Chief, Enforcement
Bureau (Bureau), by her attorneys, hereby respectfully replies to "Maritime's Status Report on

¹ See Order, FCC 12M-21 (ALJ, rel. March 26, 2012). The Presiding Judge's Order erroneously suggests there remains a dispute between the Bureau and Maritime concerning the status of Maritime's document production. The current dispute actually concerns Maritime's responses to the Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations, filed by the Bureau and Skytel on December 7, 2011 (Joint Interrogatories).

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Discovery and Response to the Enforcement Bureau's Request for the Presiding Judge's Intervention," filed by Maritime Communications/Land Mobile, LLC, on March 22, 2012 (Response).

2. In its "Status Report On Maritime's Discovery Deficiencies And Request For Presiding Judge's Intervention," filed by the Bureau on March 20, 2012 (Intervention Request), the Bureau requested the Presiding Judge's intervention to address continuing, egregious deficiencies in Maritime's responses to Interrogatory Nos. 13, 14 and 15 of the Joint Interrogatories. The Bureau requested leave to submit this reply brief because Maritime's Response to the Bureau's Intervention Request muddled the record concerning the completeness of its interrogatory responses.

3. The Bureau believes it is in the public interest for the Presiding Judge to have a complete and accurate record as he considers the matters raised in the Bureau's Intervention Request. Accordingly, the Bureau offers the following summary of pertinent facts:

- ***On the Incumbent Licenses:*** Maritime maintains that Issue (g) of the HDO (involving permanent discontinuance of its site-based licenses) is moot as to 60 of these licenses because they are authorized to serve the same areas as its geographic licenses. Maritime, however, offers absolutely no legal support for this claim. Simply because Maritime's site-based licenses are authorized to serve the same coverage area as its geographic licenses does not eliminate Maritime's obligations to construct and operate its site-based authorizations. Unless Maritime takes the affirmative step of cancelling its site-based authorizations and having them subsumed by the geographic licenses (which it has not), the site-based licenses remain independent authorizations which Maritime has the responsibility as a licensee to construct and operate. Consequently, Maritime has no lawful justification for refusing to provide information that is directly relevant to Issue (g) concerning the operating status of these 60 site-based licenses in response to Interrogatory Nos. 13, 14 and 15. That Maritime admits "**it is not certain**" of the current status of these 60 site-based licenses "**and has made no effort to verify their status**"² should be viewed by the Presiding Judge as contemptible.
- ***On Interrogatory No. 13:*** This interrogatory seeks information as to whether each of Maritime's site-based stations is operating or has been operating. The interrogatory couldn't be clearer. Maritime concedes, however, that, in response to this interrogatory, it identified only those stations that were "fully constructed,

² See Response at 3.

operational, and capable of handling two way traffic” and those that were subject to third-party leases.³ It is self-evident that whether a station is *capable* of operating is decidedly different from whether that station is *actually* operating. Interrogatory No. 13 plainly requests the latter, and Maritime should be compelled to provide this information once and for all as to each and every one of its site-based licenses.

Furthermore, Maritime’s suggestion that Interrogatory No. 13 asks only whether Maritime’s stations are currently operating and not whether its stations are currently “transmitting a signal” is ridiculous. The Bureau made clear to Maritime during the March 14, 2012 negotiations that it was looking for Maritime to confirm, for each station, whether it is on-the-air or transmitting a signal and whether it has been continuously on-the-air or transmitting a signal since its construction.⁴ As memorialized in a letter dated that same day, Maritime agreed to provide this information.⁵ For Maritime to now take issue with the Bureau’s insistence that it confirm whether its stations are on-the-air and have been on-the-air is disingenuous at best.

- **Interrogatory Nos. 14 and 15.** Together, these interrogatories ask Maritime to identify any stations for which operations were discontinued, the reasons why any such operations were discontinued, the date operations were discontinued, whether operations were resumed, and whether these stations are currently off-the-air. In response to these interrogatories, Maritime provided a chart identifying stations for which operations had been temporarily discontinued, the date operations were discontinued, and the reason for such discontinuance.⁶ It did not confirm whether operations had been resumed (as requested by Interrogatory No. 14) or confirm whether these or any other stations were currently off-the-air (as requested by Interrogatory No. 15). There is no reason why Maritime should not provide this relevant information.

4. The Bureau’s Request for the Presiding Judge’s Intervention is not, as Maritime suggests, simply a “tactical effort” by the Bureau “to create an erroneous impression of [Maritime’s] uncooperativeness.”⁷ The Bureau does not engage in such tactics and is offended by such mud-slinging. Moreover, any impression that the Presiding Judge may draw about Maritime’s intransigence is the direct result of Maritime’s own demonstrated pattern of conduct during the discovery phase of this proceeding. By its own admission, Maritime has not made

³ See Response at 7.

⁴ See also Order FCC 12M-19 (ALJ, rel. Mar. 12, 2012), noting that the attached chart was a starting point for these negotiations.

⁵ See Exhibit A to the Bureau’s Intervention Request.

⁶ See Table 2 to Exhibit B to the Bureau’s Intervention Request (stations identified with Status Code “T”) and Exhibit C to the Bureau’s Intervention Request at Table 3.

⁷ Response at 8.

any effort to verify whether 60 of the 67 site-based authorizations at issue are “on-the-air” and thus has not “fully and completely” responded to Interrogatory Nos. 13, 14 and 15 as required by the Presiding Judge’s January 27, 2012 Order.⁸ Indeed, Maritime refuses even to engage in this exercise – suggesting instead that it is somehow the Bureau’s obligation to uncover this information on its own.⁹ This is outrageous. The Bureau engaged in legitimate discovery by requesting factual information from Maritime that is directly and indisputably relevant to Issue (g) – namely, whether each of its stations is currently on- or off -the-air. As a Commission licensee, Maritime should have this information available to it. Indeed, this is fundamental information that any Commission licensee should know. Maritime should be directed to stop making excuses and to get on with providing this information so that this case may move forward without further delay. The public interest deserves nothing less.

5. For the foregoing reasons, and for those addressed in the Bureau’s Intervention Request, the Bureau implores the Presiding Judge to issue an order *ex tempore* compelling Maritime to provide the following information, affirmed under oath:

- A chart, organized by call sign and location, indicating with a “yes” or “no” whether each location is currently on-the-air, *i.e.*, transmitting a signal;
- A chart, organized by call sign and location, indicating with a “yes” or “no” whether each location has been continuously on-the-air since the date that location was constructed;
- A chart, organized by call sign and location, indicating with a “yes” or “no” whether the operations of the stations identified in Table 3 of Maritime’s Errata resumed and the date on which any such operations resumed; and
- For any call sign and location which Maritime indicates is not currently on-the-air, a chart that specifies the date that call sign or location went off the air and the reason why.

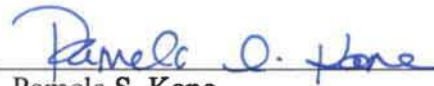
⁸ See Order, FCC 12M-7 (ALJ, rel. Jan. 27, 2012).

⁹ See Response at fn. 2.

The Bureau also reiterates its request that the Presiding Judge admonish Maritime that if it fails to provide the information in the manner set forth above by a prescribed date, the Presiding Judge will impose an adverse inference against it.

Respectfully submitted,

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March 27, 2012

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 27th day of March, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S REPLY TO MARITIME'S STATUS REPORT AND RESPONSE" to:

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